

### **REMARKS/ARGUMENTS**

After entry of the present amendment, claims 1, 4-13, and 15-25 will remain pending for further prosecution. Claims 1, 4, 5, 7, 8, 15, and 21 are amended. Claims 2, 3, and 14 were previously cancelled. No new matter has been added.

Support for the claim amendments can be found, for example, in paragraphs [0022]-[0029] and FIGS. 1-4 of pre-grant publication no. US 2007/0031960.

#### **Telephone Interview Summary**

The Applicant notes with appreciation the telephone interview with Examiners Ma and Marcheschi on October 21, 2010, and subsequent follow up on November 16, 2010 with Examiner Ma. During the interviews, the Applicant's representative discussed with the Examiners possible amendments to overcome the rejections based on Husar US 2002/0061260 ("Husar"). The Examiners indicated that they would consider additional amendments in furthering the prosecution of the present application.

#### **Obviousness Rejection of Claims 1, 4-13, and 15-25 Based on Husar**

Claims 1, 4-13 and 15-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Husar (US 2002/0061260). These rejections are respectfully traversed.

The Office Action generally acknowledges that Husar fails to explicitly disclose a platform extending from an inner surface of a first format member. (*See* Office Action, at 3). To overcome Husar's stated deficiencies, the Office Action improperly relies on structural elements 32 illustrated in FIG. 13 as supporting an obvious engineering design choice for placing the disclosed structural elements 32 from FIG. 13 onto cover sheeting 3 from FIG. 1. (*See* Office Action, at 3). For reasons discussed further below, Husar fails to disclose or suggest amended independent claims 1, 8, 15, or 21, and their respective dependent claims.

Husar describes a device for handling liquid samples, particularly for sample volumes of about 0.001 microliters and greater. (*See* ¶[0018]). Husar's device is disposable and may serve as a reaction vessel for liquid samples and/or reagents and as handling apparatuses for optical measurement. (*See* ¶¶ [0070]-[0075], [0196]). Husar describes various structural elements

which can be formed in order to increase the surface and/or stimulate turbulence and/or produce a shear force on a wall of a well of a disposable. (See ¶[0187]). Husar then states a disposable the well of which is provided with such structural elements 32<sup>I</sup> to 32<sup>VI</sup> may be used to thoroughly mix a sample liquid by introducing one or more pressure surges into the sample liquid by means of a displacement device (or an actuation device). (See Husar ¶[0189]). Husar further describes that several elements of one of the types shown (i.e., structural elements 32<sup>I</sup> to 32<sup>VI</sup>) or several types are preferably produced at the bottom of the well of one of the explained volume receiving parts (e.g., FIG. 14). (See Husar ¶[0187]).

Husar fails to disclose amended independent claims 1, 8, 15, and 21 in at least two ways. First, Husar suggests the structural elements, which are improperly alleged by the Office action to be platforms, are produced on the bottom of the well. Thus, Husar fails to suggest, and rather appears to teach away from, the structural elements being a platform extending from an inner surface of the first format member. Second, Husar's teaching that the structural elements mix sample liquid and stimulate turbulence supports its teaching of the elements being present on the bottom of the well, not a well being shaped to accept a platform.

In further contrast to amended claims 1, 8, and 15, Husar's disclosure of structural elements does not teach or suggest a platform filling a significant portion of a predetermined volume, or first volume, of a well; nor does it teach or suggest a sample testing region having a volume significantly less than the predetermined volume or first volume. Husar also fails to teach or suggest a well and platform defining a sample testing region having a predetermined sample testing region height, as generally recited in amended claim 1.

Finally, Husar fails to teach or suggest: (i) a sample testing region having a first volume, and (ii) a sample fill nose having a second volume approximately equal to the first volume, as generally recited in amended claim 21.

For at least these reasons, Husar does not, and cannot, teach or suggest amended claims 1, 8, 15, and 21. Similarly, Husar fails to teach or suggest dependent claims 4-7, 9-13, 16-20, 22-25. Thus, the rejections of claims 1, 4-13, and 15-25 should be withdrawn, and the claims should be allowable.

**CONCLUSION**

The Applicant submits that claims 1, 4-13, and 15-25 are in condition for allowance and action toward that is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (312) 425-8552.

\* \* \* \* \*

It is believed that no additional fees are due except for the RCE fee and the two-month extension of time fee. However, should any additional fees be required (except for payment of the issue fee), or credits for overpayment be due, the Commissioner is authorized to deduct the fees from, or credit the overpayments to, the Nixon Peabody Deposit Account No. 50-4181, Order No. 247082-000093USPX.

Respectfully submitted,

Dated: November 19, 2010

/Peter J. Prommer – Reg. No. 54743/  
Peter J. Prommer, Reg. No. 54743  
NIXON PEABODY LLP  
300 South Riverside Drive, 16th Floor  
Chicago, Illinois 60606-6613  
(312) 425-3900 - main  
(312) 425-3909 - facsimile

ATTORNEY FOR APPLICANT